

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

September 15, 2008

Certified Mail Number: 7007 0220 0001 0159 9056

PWSID# CO-0151700
TOWN OF RYE
PO BOX 268
RYE, CO-81069

RE: Service of Drinking Water Enforcement Order, Number: DC-080915-3

Dear Mr. Sir or Madam:

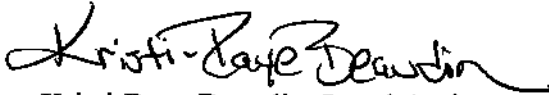
The Town of Rye is hereby issued the enclosed Enforcement Order (the "Order"). This Order is issued by the Colorado Department of Public Health and Environment, Water Quality Control Division (the "Department") pursuant to the authority given to the Department by §25-1.5-203 of the Colorado Revised Statutes ("C.R.S."). The Department bases this Order upon findings that the Town of Rye has violated the *Colorado Primary Drinking Water Regulations* (the "Regulations") as described in the enclosed Order.

As a recipient of an enforcement order the Town of Rye may request a formal hearing to contest the Order in accordance with the Regulations, 5 CCR 1003-1, §1.6.7(g). Requests for such a hearing must be filed in writing with the Department within thirty (30) calendar days after service of the Order. Hearings on enforcement orders shall be held in accordance with applicable provisions of the State Administrative Procedure Act, §§24-4-101 through 24-4-108, C.R.S.

This action could result in the imposition of administrative or civil penalties. The Department or a State District Court is authorized pursuant to §25-1-114.1, C.R.S. to impose a penalty of up to \$1,000 per violation per day. Please be advised that the Department is continuing its investigation into this matter and the Department may identify supplementary violations that warrant amendments to this Order or the issuance of additional enforcement actions.

Should the Town of Rye desire to informally discuss this matter with the Department or if the Town of Rye has any questions regarding the Order, please don't hesitate to contact Cathy Heald at (303) 692-3254 or by electronic mail at catherine.heald@state.co.us.

Sincerely,



Kristi-Raye Beaudin, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

Enclosure

cc: Pueblo City- County Health Department
Compliance Monitor / Drinking Water File

ec: Dave Knope, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Betsy Beaver, Facility Operators Program, CDPHE
Shawn McCaffrey, EPA Region VIII
Patricia Klocker, Assistant Division Director, Consumer Protection Division, CDPHE
Carolyn Schachterle, OPA
John Van Oort, System Operator (jkvanoort@excite.com)



COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL DIVISION

ENFORCEMENT ORDER

NUMBER: DC-080915-3

IN THE MATTER OF: TOWN OF RYE

PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0151700
PUEBLO COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment (the "Department") by §25-1-109 and §25-1.5-203 of the Colorado Revised Statutes ("C.R.S."), which authority has been delegated to the Department's Water Quality Control Division (the "Division"), the Division hereby makes the following findings and issues the following Enforcement Order:

GENERAL FINDINGS

1. The Town of Rye ("Rye") owns and/or operates a drinking water system located in the vicinity of 8171 Park Road and approximately 0.2 miles west of the Town of Rye, Pueblo County, Colorado (the "System").
2. Rye is a person as defined by 5 CCR 1003-1, §1.5.2(92).
3. Rye is a supplier of water within the meaning of §25-1.5-201(2), C.R.S. and its implementing regulation, 5 CCR 1003-1, §1.5.2(122).
4. The System is a public water system as defined by §25-1.5-201(1), C.R.S. and its implementing regulation, 5 CCR 1003-1, §1.5.2(101).
5. The Public Water System Identification Number ("PWSID"), assigned to the System by the Division is PWSID #: CO-0151700.
6. Pursuant to 5 CCR 1003-1, §1.2, the System is subject to the *Colorado Primary Drinking Water Regulations* (the "Regulations"), which were adopted pursuant to §25-1.5-203, C.R.S.
7. Rye provides piped water for human consumption from the System to at least fifteen (15) service connections used by year-round residents of the area served by the System and/or regularly serves at least twenty-five (25) year-round residents. The System is therefore classified as a "community water system" as defined by 5 CCR 1003-1, §1.5.2(13).

8. The System's source of water is surface water as defined by 5 CCR 1003-1, §1.5.2(123). Additionally, the System utilizes or has utilized a groundwater well as a supplemental source of water.

First Violation
(Failure to Provide Treatment of a Public Water Supply)

9. Pursuant to 5 CCR 1003-1, §7.1.3(b), a public water system that uses a surface water source or a groundwater source under the direct influence of surface water and serves fewer than 10,000 people must provide treatment consisting of both disinfection, as specified in 5 CCR 1003-1, §7.1.2, and filtration treatment which complies with the requirements of 5 CCR 1003-1, §§7.1.3(f) or (g) or §7.3.4(a), (b) or (c).
10. Pursuant to 5 CCR 1003-1, §7.1.3(c), failure to meet any requirement of 5 CCR 1003-1, §7.1.3 is a treatment technique violation.
11. On May 2, 2008, Rye contacted the Division to discuss water filtration problems associated with frequent, costly bag filter fouling. Rye advised the Division that it was currently using Division approved Strainrite final finish bag filters, model # HPM99-CCX-2-SR. Rye further advised that due to the design of the Strainrite bag filters, Rye was changing out the filter bags every two days and Rye anticipated that filter bag changes would increase to a daily basis due to spring run-off conditions. Rye informed the Division that during the Rye Town Council meeting held, Thursday, May 1, 2008, that Rye made the decision to bypass the Strainrite Filter System beginning Sunday, May 4, 2008.
12. On May 2, 2008 the Department mailed a letter to Mr. John Van Oort (Rye Administrative Contact), notifying Rye that because of the decision to bypass the Strainrite Filter System beginning, Sunday, May 4, 2008, Rye must operate under a "Boil Water Order" beginning Sunday, May 4, 2008, until Rye receives written notification from the Division stating otherwise or a new or upgraded filtration system can be properly designed, approved, and installed at Rye's water treatment plant. The letter also informed Rye of the requirement to issue a Boil Water Advisory to each of the potential water users of the System. The Boil Water Order was required as a measure to protect public health because the System will be serving water that does not meet the requirements of the Regulations, specifically 5 CCR 1003-1, §7.1.3(f)(2).
13. Department records to-date establishes that Rye has not provided the Division with the outstanding items needed for the lifting of the Boil Water Order or for the approval of the System's water filtration upgrades.
14. Rye's ongoing failure to provide and maintain approved filtration treatment on the System's distributed water constitutes violation(s) of 5 CCR 1003-1, §7.1.3(b).

Second Violation
(Failure to Submit Design Plans and Specifications Approval Prior to Construction, Improvements or Modifications)

15. Pursuant to 5 CCR 1003-1, §1.11.2(b), no person shall commence construction of any new waterworks, or make improvements to or modify the treatment process of an existing waterworks, or initiate use of a new source, until plans and specifications for such construction, improvements, modifications or use have been submitted to, and approved by the Department. The Department shall grant such approval when it finds that the proposed facilities are capable of complying, on a continuous basis, with design criteria as stated above, and with all applicable laws, standards, rules and regulations.
16. On October 25, 2000, September 19, 2003 and November 8, 2004, a Division representative conducted a compliance inspections of the System, pursuant to the Division's authority under §25-1.5-204, C.R.S. and 5 CCR 1003-1, §1.7, to determine the System's compliance with the Regulations.
17. During the inspections, the Department inspectors observed that Rye had constructed a cation exchange unit for the treatment of water provided by well #1. Department records established that Rye had not submitted plans and specifications for the cation exchange unit nor had the Department approved the construction of such a treatment system for the System.
18. In letters dated November 3, 2000, October 24, 2003, December 27, 2004 and August 25, 2006 the Division formally advised Rye that the construction of the cation exchange unit for the treatment of water provided by well #1, which exceeds the maximum contaminate levels for combined radium 226 and 228, has been constructed without prior approval from the Division. The Division advised Rye that this treatment unit must remain inactive until plans and specifications have been submitted and approved.
19. In a letter received by the Division on November 10, 2004, Tom Holgerson (Mayor of Rye) advised the Division that Rye will not use the cation exchange unit until receiving approval from the Health Department.
20. Department records to-date establishes that Rye has not submitted plans and specifications for the cation exchange unit nor has the Department approved the construction of such a treatment system for the System.
21. Rye's failure to submit and/or obtain Department approval of the System's plans and specifications prior to construction, improvements or modifications to the System constitutes violations of 5 CCR 1003-1, §1.11.2(b).

COMPLIANCE ORDER

Based upon the foregoing factual and legal determinations and pursuant to 5 CCR 1003-1, §1.6.7, Rye is hereby ordered to:

22. Immediately comply with the *Colorado Primary Drinking Water Regulations*, 5 CCR 1003-1, Articles 1 through 12.

Further, the Division hereby orders Rye to comply with the following specific terms and conditions of this Order.

23. In order to ensure long-term compliance with the Surface Water Treatment Rule (5 CCR 1003-1, Article 7) and the Radionuclide Rule (5 CCR 1003-1, Article 6, §6.3), Rye shall evaluate and upgrade, as needed, the System's surface/ground water treatment plant in accordance with the following schedule:
- a. By October 31, 2008, submit for Department review and comment a finalized Preliminary Engineering Report for system improvements to comply with the Surface Water Treatment Rule and the Radionuclide Rule.
 - i. The Preliminary Engineering Report submittal package must be developed consistent with the *Colorado Drinking Water Preliminary Engineering Report Guidance & Review Checklist Form*. (see http://www.cdphe.state.co.us/wq/opa/pdf/19_CPERGuideChecklistDW.pdf)
 - ii. The Preliminary Engineering Report must clearly identify the specific treatment technology Rye will use to ensure compliance with the Surface Water Treatment Rule and the Radionuclide Rule.
 - iii. The Preliminary Engineering Report must include a feasibility analysis and draft Residuals Management Plan for management of residuals from the treatment technology selected. The feasibility analysis and draft Residuals Management Plan shall include preliminary design for the proposed disposal method and a characterization of the waste. The feasibility analysis and draft Residuals Management Plan must be developed in close coordination with applicable regulatory program staff. The Division's Industrial Permits Unit should be contacted to discuss the feasibility of discharging ion exchange wastewater to Greenhorn Creek and the need for possible treatment of the residuals stream, as that was the specified method of disposal given in the Draft Preliminary Engineering Report dated June 16, 2008 submitted by JVA Consulting Engineers. In addition, the Hazardous Materials and Waste Management Division should be contacted to discuss any applicable solid waste or Technologically Enhanced Naturally Occurring Radioactive Materials ("TENORM"), requirements.
 - iv. The Preliminary Engineering Report submittal package must include design calculations showing that the proposed treatment system and waste disposal facilities are properly sized and chlorine contact times can be met for expected flow rates.

{Please note that, prior to construction, the Department must give final approval to any modifications to the System's water source or treatment process. The Department will not

perform a detailed review and final approval of any proposed modifications until the final design plans and specifications have been received pursuant to paragraph 23(b) below.}

- b. By January 1, 2009, submit Final Design Plans and Specifications for the System improvements for Department review and approval in accordance with the *State of Colorado Design Criteria for Potable Water Systems*.
 - c. By December 31, 2009, complete construction/implementation of the Department approved System improvements to ensure long-term compliance with the Surface Water Treatment Rule and the Radionuclide Rule.
 - d. By February 15, 2010, submit the Professional Engineer's Certification that the System improvements to comply with the Surface Water Treatment Rule and the Radionuclide Rule were constructed/installed as approved by the Department.
24. Rye shall not utilize the existing groundwater well, which exceeds the maximum contaminate levels for combined radium 226 and 228, or the associated cation exchange unit that has been constructed without prior approval from the Department, until Rye submits plans and specifications for such use and the Department responds in writing approving the use of the water source and treatment components.
25. Rye shall submit "System Improvement Project - Progress Reports" to the Division every ninety (90) calendar days. The first report shall be submitted to the Division by October 31, 2008. At a minimum, each report shall clearly indicate the status of the system improvement project at the time the report is filed and outline activities to be undertaken within the next ninety (90) calendar days. Each report shall also detail any public notification provided during that period. These reports shall be required until the System has effectively addressed and returned to compliance with the Surface Water Treatment Rule and the Radionuclide Rule.
26. Consistent with the terms of the May 2, 2008 Boil Water Order, Rye shall reissue its public notice (*boil water advisory*) in accordance with 5 CCR 1003-1, §9.2 every two (2) weeks until the Department has acknowledged in writing that Rye is consistently distributing safe water. Within ten (10) calendar days of completion of each required public notification, Rye shall submit to the Department, along with the mandatory certification, a representative copy of each type of notice distributed, published, posted, and/or made available to the persons served by the System. The Division will consider an alternative public notice frequency upon a written request and justification from Rye demonstrating that such an alternate frequency is appropriate and effective in informing all persons served by the System.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this order, Rye shall submit an original and one copy (electronic is preferred) to the Division at the following address:

Colorado Department of Public Health and Environment
Water Quality Control Division / WQCD-WQP-B2
Compliance Assurance and Data Management Section / Enforcement Team
Attention: Catherine Heald

4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Email: catherine.heald@state.co.us

(For any facsimile transmittals, please include a cover sheet addressed to Ms. Heald.)

Pursuant to 5 CCR 1003-1, §1.6.4(e), all reports, notices, summaries, and certifications required to be submitted to the Department by the public water system must bear the original signature of the owner or the owner's authorized representative.

NOTICE OF COMPLETION

Rye shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Enforcement Order. The Division shall either accept or reject the Notice of Completion in writing. If the Division rejects the Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. If Rye wishes to dispute the Division's rejection of its Notice of Completion, it shall, within fifteen (15) calendar days of receipt of the Division's rejection, submit a written statement as to its belief of full compliance, addressing in detail all concerns the Division raised in the rejection letter to the System's Notice of Completion.

PRIOR APPROVAL REQUIRED

Pursuant to 5 CCR 1003-1, §1.11.2, no person shall commence construction of any new waterworks, or make improvements to or modify the treatment process of an existing waterworks, or initiate use of a new source, until plans and specifications for such construction, improvements, modifications or use have been submitted to, and approved by the Department. A Professional Engineer registered in the State of Colorado shall design all treatment systems serving a community water supply. The Department shall grant such approval when it finds that the proposed facilities are capable of complying, on a continuous basis, with all applicable laws, standards, rules and regulations.

POTENTIAL ADMINISTRATIVE/CIVIL AND CRIMINAL PENALTIES

You are also advised, pursuant to §25-1-114.1, C.R.S., that violators of the Regulations or final Enforcement Orders issued by the Department are subject to civil or administrative penalties of up to one thousand dollars (\$1,000) per violation per day, to be imposed by the Department or a State District Court. Further, pursuant to §25-1-114(4), C.R.S., any person, association, or corporation, or the officers thereof, who violates, disobeys, or disregards any provision of the Regulations or an Enforcement Order is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment and, in addition to such fine and imprisonment, shall be liable for any expense incurred by health authorities in removing any nuisance, source of filth, or cause of sickness. By virtue of issuing this Enforcement Order, the

Department has not waived its right to bring an action for administrative, civil or criminal penalties and may bring such action in the future.

REQUEST FOR HEARING OR APPEAL

You are further advised, pursuant to 5 CCR 1003-1, §1.6.7(g), that a recipient of an Enforcement Order may request a hearing contesting such order. Requests for such a hearing shall be filed in writing with the Department within thirty (30) calendar days after service of the order. Such requests shall state the grounds upon which the order is contested and state the amount of time the recipient estimates will be required for the hearing. Hearings on Enforcement Orders shall be held in accordance with applicable provisions of the State Administrative Procedure Act, Article 4 of Title 24, C.R.S.

ADDITIONAL ACTION

You are further advised that under §25-1-114.1(1), C.R.S., the Department may institute a civil action against any person who violates a final Enforcement Order of the Department issued for violation of any minimum general sanitary standard or regulation adopted pursuant to §25-1.5-203, C.R.S.

Additionally, the Department may request the Attorney General to seek a temporary restraining order or permanent injunction to prevent or abate any violation of a minimum general sanitary standard or regulation adopted pursuant to §25-1.5-203, C.R.S. Further information concerning the aforementioned action is contained in §25-1-114.1(3), C.R.S.

Issued at Denver, Colorado, this 12th day of September, 2008.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
Water Quality Control Division